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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,782	06/11/2003	Paul Silinger	H0002233 US - 4018/H9925-	2472
62993	7590	12/31/2007	EXAMINER	
BUCHALTER NEMER 18400 VON KARMAN AVE. SUITE 800 IRVINE, CA 92612			VAN, LUAN V	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Mailed : 12-31-07
In re Application of
Slinger et al.
Serial No. 10/765,782
Filed: June 11, 2003
For: INTERNAL HEAT SPREADER PLATING
METHODS AND DEVICES

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: DECISION
: DENYING
: PETITION
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This is a decision on APPELLANT'S PETITION TO THE DIRECTOR UNDER 37 CFR 1.181, filed November 6, 2007.

Applicant filed an appeal brief on May 9, 2007, and a corrected brief on July 10, 2007, to which the examiner responded in an examiner's answer mailed September 6, 2007.

The instant petition was then timely filed on November 6, 2007 and is before the Director of Technology Center 1700 for consideration. The petition requests that the examiner's answer of September 6, 2007 be deemed to contain a "new grounds of rejection."

The petition is **DENIED** for the reasons below.

DECISION

As background, what constitutes a new grounds of rejection is discussed in MPEP 1207.03:

There is no new ground of rejection when the basic thrust of the rejection remains the same such that an appellant has been given a fair opportunity to react to the rejection. See *In re Kronig*, 539 F.2d 1300, 1302-03, 190 USPQ 425, 426-27 (CCPA 1976).

Where the statutory basis for the rejection remains the same, and the evidence relied upon in support of the rejection remains the same, a change in the discussion of, or rationale in support of, the rejection does not necessarily constitute a new ground of rejection.

In the instant application, the final rejection (mailed November 13, 2006) includes, inter alia, a rejection under 35 USC 103(a) of claims 1-15 as being obvious over the admitted prior art in view of US Patent 4,772,371 to Lace et al. In making that rejection, the examiner stated that the admitted prior art arguably did not explicitly teach a horizontal sparger, and then stated that it would have been obvious to include a horizontal sparger in the admitted prior art device based upon the teachings of Lace et al.

The examiner's answer mailed September 6, 2007 repeats the above rejection. In the course of responding to applicant's arguments, the examiner's answer includes at page 12, first full paragraph, the statement that "it is further noted that since the examiner is not relying on the vertical spargers to meet the horizontal sparger of the instant claims, the plurality of shields 13 of Admitted Prior Art is not between the sparger and the cathode as stated in claim 15."

Applicant contends that this statement amounts to a new grounds of rejection. The petition notes that the statement above was not previously made, and further is not clear. Reference is made to the petition and Exhibit B for a complete statement of applicant's position.

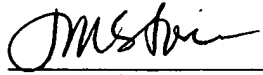
The mere fact that a particular statement appears for the first time in an examiner's answer does not mean that the statement is necessarily a new grounds of rejection. Rather, the question is whether the examiner has changed the basic thrust of the rejection, so as to deny applicant a fair opportunity to respond to the rejection. See MPEP 1207.03, quoted above.

Under the standards set forth in the MPEP, the examiner's statement on page 12 cannot be considered to constitute a new grounds of rejection. The examiner relies upon the same references under the same statutory ground, and maintains the same 'basic thrust' of the rejection, namely that it would have been obvious to include a horizontal sparger in the admitted prior art device based on the teachings of Lace et al. Applicant has had ample opportunity to respond to the merits of this position, as witnessed by the arguments presented in the appeal brief against it.

The examiner's statement on page 12 appears to be simply an attempt to elaborate on why the proposed combination would meet the claim limitations with respect to the position of the shields. Both applicants' briefs and examiners' answers frequently raise some new points of argument as to why the claims are or are not patentable. This is permissible in an answer if the basic thrust of the rejection remains the same. Such is the case here.

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As the examiner's answer does not contain a new grounds of rejection, the instant petition is **DENIED.**



Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

BUCHALTER NEMER
18400 VON KARMAN AVE.
SUITE 800
IRVINE CA 92612